



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 19, 1998

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR98-0774

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113386.

The City of McAllen (the "city") received a request for information regarding an accident, referenced by file number 95-64969. You have provided this office with a copy of your letter to the requestor indicating that the city is releasing the "front page" information. You assert that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. In addition, you claim that section 51.14(d) of the Family Code excepts the remaining requested information from disclosure.

Initially, we address your claim that section 51.14(d) applies to the requested information.¹ Section 51.14(d) protects juvenile law enforcement records concerning conduct that occurred before January 1, 1996.² The requested report does not appear to involve juvenile conduct. *See* Fam. Code § 51.02 ("child" is a person "seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age"). Accordingly, we conclude that the city may not withhold the

¹Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, including statutory law.

²Juvenile offender records held by law enforcement agencies are now expressly confidential under section 58.007(c) of the Family Code. However, juvenile law enforcement records concerning conduct that occurred before January 1, 1996, are governed by former section 51.14(d) of the Family Code, which is continued in effect for that purpose. Act of June 2, 1997, H.B. 1550, 75th Leg., R.S.

requested information under section 552.101 of the Government Code as information deemed confidential by law.

Section 552.108 of the Government Code reads in part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

This office applies section 552.108(a)(1) when a requested offense report pertains to an ongoing investigation or prosecution. A governmental body claiming section 552.108(a)(2) should demonstrate that the requested information relates to a concluded criminal investigation that has come to some type of final result other than a conviction or deferred adjudication.

A governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977). In this case, the city has provided this office conflicting information so that we are unable to conclude that section 552.108 is applicable in this instance. You state that "[i]n this particular case, the case investigation is ongoing." You also state that the "[i]n this particular case, the attached

documents deal with criminal activity that did not result in conviction or deferred adjudication.” It is not clear to this office, nor have you explained, how or if the investigation actually concluded in light of the fact that you state the investigation is ongoing. We cannot reconcile this apparent conflict.

This office has interpreted section 552.108(a)(2) to apply to information that relates to a criminal investigation or prosecution that concluded in a result other than a conviction or deferred adjudication. Thus, if the information relates to a pending case, that is, a case which has had no result, section 552.108(a)(2) cannot apply because a pending case has not concluded. In contrast, this office has interpreted section 552.108(a)(1) to apply to, among other things, information that relates to a pending criminal investigation or prosecution because the release of information that relates to a pending case is presumed to interfere with the investigation and prosecution of the case. Consequently, in the usual case, subsections (a)(1) and (a)(2) cannot simultaneously apply to information relating to the same case. Thus, to argue that both subsections apply to requested information by stating that the relevant case is pending and also stating that the case did not result in a conviction or deferred adjudication is to present conflicting information about the status of the case. In order to determine the applicability of section 552.108, this office requires accurate, current information about the status of the case to which requested information relates. Consequently, the city may not withhold the information from the requestor based on section 552.108 of the Government Code.

However, certain information in the submitted information is confidential under section 552.130. The Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

See Act of May 29, 1997, S.B. 1069, § 4, 75th Leg., R.S. (to be codified at Gov't Code § 552.130). Thus, you must withhold the driver's license number, VIN number, and the license plate number pursuant to section 552.130.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous

determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/gle

Ref.: ID# 113386

Enclosures: Submitted documents

cc: Ms. Becky McCombs
C.C. Interrogatory Service
4617 Bonner
Corpus Christi, Texas 78411
(w/o enclosures)